IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO.1904 OF 2005
WITH
CIVIL APPLICATION NO.4277 OF 2005

M/s.Shipping Corporation of India,
A Government of India undertaking
and a Company incorporated under the
Companies Act, 1956 having its
Registered office at Shipping Huse,
Nariman Point, Mumbai-400 021. ...Appellant.

Versus

Shri Himatlal Sewai Solanki,
Residing at Choro Vachhadev,
House No.829, Ghoghla, Diu,
Ghogla-362 540. ...Respondent.

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Mrs.Usha Srivastava i/b. M/s.Consulta Juris for the Appellant.
Ms.Kunda Samant for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 18, 2005.

ORAL JUDGMENT:

Admit. Perused the pleadings, evidence and the proceedings with the assistance of Learned Counsel for the parties and the appeal is taken up for final disposal.

2. The Respondent was a Seaman, registered with the Seamen's Association and in a working span of 22 years rendered duty on diverse ships including those of the Shipping Corporation of India. The Respondent was taken on board a vessel of the Appellant, M. V. Major Thapa, on 16th May 1996 under Articles of Agreement. As a seaman, the Respondent was required to carry out work of a varied nature including painting, sweeping, cleaning and repairing in connection with the ship. On 21st November 1996, the ship was at Mumbai Port and while on Board, the Respondent suffered severe pain in the chest and informed the Master of the Ship, who sent him to a Doctor appointed by the Appellant. He in turn referred the Respondent to the Harkisondas Hospital. An ECG was taken and the Respondent was admitted as an indoor patient for a period of 12 days. After discharge he was allowed two months' medical leave. After the period of leave, the Respondent came back to Mumbai from his village in the Union Territory of Diu. The Respondent was directed to report to Hospital and on 17th July 1997, the Chief Medical Officer declared him permanently unfit for sea service on the ground that he suffered from Acute Interior Wall

Myocardial Infarction. The stress test had shown a positive result for Reversible Ischemia. The registration of the Respondent was cancelled on 26th August 1997 by the Director at the Seamen's Employment Office. The Respondent was paid severance compensation of Rs.83,992/- after deducting Income Tax of Rs.6,798/- on 8th October 1997. His services came to be discontinued.

3. The Respondent preferred an application for compensation under the Workmen's Compensation Act, 1923. Evidence was adduced on behalf of the parties. The Commissioner for Workmen's Compensation, by an order dated 3rd March 2005, allowed the claim of the Respondent in the amount of Rs.1,36,994/- together with interest at the rate of 12% p.a. from 21st November 1996, the date of the accident. The Trial Judge held that the chest pain which the Respondent experienced and the reasons for his invalidation arose out of an injury sustained in the course of his employment while the Respondent was actually rendering duties. The Court was of the view that within the meaning of sub-section (4) of Section 3 of the

Act, the Respondent was entitled to compensation since the disease was directly attributable to a specific injury by an accident arising out of and in the course of his employment. The finding of the Trial Court is questioned in this appeal.

4. Section 30 of the Workmen's Compensation Act, 1923 (“the Act”) provides that an appeal shall lie to the High Court inter alia from an order awarding as compensation, a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum. The proviso thereto lays down that no appeal shall lie against any order unless a substantial question of law is involved in the appeal. Therefore, in determining the scope of enquiry in these proceedings, it merits emphasis that the legislature has conditioned the maintainability of an appeal only to a case where a substantial question of law is involved in the appeal.

5. Sub Section (1) of Section 3 of the Act provides in so far as is material, that if a personal injury is caused to a workman by

accident arising out of and in the course of his employment, the employer is liable to pay compensation in accordance with the provisions of Chapter II of the Act. The proviso to Section 3 lays down exceptions which are not material for the purposes of the present case. Sub-section (4) of Section 3 then enunciates that no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of employment.

6. On behalf of the Appellant, it has been submitted that the Respondent suffered chest pain out of natural causes and it was unconnected with the nature of his duties or with the course of his employment. In these circumstances, it was submitted that the Respondent would not be entitled to maintain a claim of compensation under the Workmen's Compensation Act, 1923 merely because the incident took place while he was on board the vessel wherein he had been engaged by the Appellant as a seaman.

7. There is a long line of precedent, the leading judgment of

the Supreme Court on the issue being **Mackinnon Mackenzie Vs. Ibrahim Mahommad Issak,** AIR 1970 SC 1906. The Supreme Court held that in order to sustain a claim under the Act, “the injury by accident must arise both out of and in the course of employment”. Mr.Justice Ramaswami speaking for a Bench of three Learned Judges held thus:

> “The words “in the course of the employment” means “in the course of the work which the workman is employed to do and which is incidental to it”. The words “arising out of employment” are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered”. In other words, there must be a causal relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such – to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has expressed himself to an added peril by his own imprudent act.” (emphasis supplied).

The Court ruled that though the onus of proving that the injury by

accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference.

8. Several decisions of the High Courts have elaborated upon the question as to when it can be said that the injury which is sustained, can be regarded as being caused by an accident arising out of and in the course of employment. In **Srimathi Laxmibai vs. Port Trust, Bombay,** 1954(1) LLJ 614, Chief Justice M.C. Chagla speaking for a Division Bench of this Court explained the test of causal connection in the following words:

> "The question therefore that we have to consider is whether there was any causal connection between the death of this workman and his employment. The authorities again are clear that if the workman died as a natural result of the disease from which he was suffering, then it could not be said that his death was caused out of his employment. The authorities have also gone to this length that if a workman is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, no liability would be fixed upon the employer. But it is equally clearly established that if the employment is a contributory cause, or if the employment has accelerated the death, or if it could be said that the death was due not only to the disease but the disease coupled with the employment, then the employer would be liable and it could be said that the death arose out of the employment of the deceased."

A Division Bench of the Madhya Pradesh High Court had occasion to consider the question in **Smt.Sunderbai Vs. General Manager, Ordnance factory, Khamaria,** 1976 Lab. I.C. 1163, Mr.Justice G.P. Singh (as he then was) formulated the principles thus:

> "(A) "Accident" means an untoward mishap which is not expected or designed by the workman. "Injury" means physiological injury;
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> -(B) "Accident" and "injury" are distinct in cases where accident is an event happening externally to a man; e.g. When a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases "accident" and "injury" coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work;
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> -(C) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence;
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> -(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury;
>
> -(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man

> might hold that the more probable conclusion is that there was a connection."

A Division Bench of this Court, similarly dealt with the question in **Zubeda Bano vs. Divisional Controller, MSRTC,** 1990 ACJ 923. Mr.Justice V.A. Mohta (as he then was) speaking for a Division Bench noted :

> "Three expressions used therein are material: (1) personal injury, (ii) accident and (iii) arising out of and in the course of employment. That death is a personal injury is beyond doubt. That death by heart attack is an accident is now well established by series of judicial pronouncements made from time to time."

The Court held that when a heart injury is brought about due to a strain due to the work involved in the employment (and not by natural wear and tear of employment), it can be compensated though a pre-existing condition may have been the contributory element and this is irrespective of the percentage of the part played by either of them namely, the work and the condition. This Court relied upon the judgment of the Full Bench of the Assam High Court in **Assam Railways and Trading Co. Ltd. vs. Saraswati Devi,** 1958-65 ACJ

394 (Assam), where the Court has held thus:

> "Even in cases where a person has been suffering from heart disease, if the nature of the work has contributed to the deterioration of the heart and his death, the personal injury can be said to arise out of his employment. The case where the deceased was not suffering from any previous heart disease is, to my mind, a stronger case and in such circumstances if he suddenly gets a heart attack while proceeding to perform his duty, the accident can be another but arising out of his employment."

In **Divisional Controller, N. E. K. R. T. C., Bellary Division vs. Marembee**, 2003 (4) Labour Law Notes 1087, the deceased workman was a driver in a Transport Undertaking and after rendering his duties on one occasion he complained of acute pain in the chest. He was removed to a hospital, but was declared dead as a result of heart attack. A Division Bench of the Madras High Court held that it was not necessary for the dependents of the deceased to prove that he was engaged in some kind of exceptional work of a particular kind which had caused excess strain on the deceased so as to result in his death. If the work in which he was engaged was likely to accelerate death, it could be said that there was a proximate nexus between the death and employment. The Court held on the facts that the

deceased workman had died of a heart attack, there being a pre-existing heart condition which was aggravated by the strain of the work which had resulted in his death. The necessity of a causal connection has been emphasised by the judgments of Learned Single Judges of this Court and of the Gujarat High Court in **Kamalabai Chintaman vs. Divisional Superintendent, Central Railway,** AIR 1971 Bom. 200 and in **Divisional Controller, Gujarat State Road Transport Corporation, Rajkot vs. Bai Jiviben Arjan,** 1981 Lab I.C. 86.

9. In the present case, the Shipping Corporation of India, adverted in the affidavit of its witness Ramchand Bhaskar Zarapkar to the Merchant Shipping (Medical Examination) Rules, 1986. These Rules, it has been stated do not permit a workman with a heart problem or heart disease to work on board ships particularly because cargo ships do not have doctors on board and may ply at a long distance from shore. Seamen are registered with the Seamen Employment Office and are taken on board subject to Articles of agreement which are signed by the Ship owner/Master of the Vessel

and the Shipping Master at Mumbai. The directives of the Seamen's Employment Office are to maintain a roster of seamen and their service record is maintained by the Shipping Master who issues what is known as Continuous Discharge Certificate.

10. The case of the workman was that in accordance with routine practice, he had undergone a full medical check up before he was allowed to board the vessel on 16th May 1996. This check up included a medical evaluation of the condition of his heart as well as an X-ray to examine the condition of the lungs. The workman deposed that he had been subjected to tests for assessing his eye sight, blood pressure and his general physical condition. The workman then deposed that he had done all kinds of work on the board the vessel for a period of six and a half months from the date of his engagement on 16th May 1996 until he suffered severe chest pain on 21st November 1996. During the course of his cross-examination, the witness was asked as to whether there was any previous history of heart ailment in his family to which the witness answered in the negative. The workman stated that he had done all

kinds of work on Board the ship including painting, sweeping and repairing. On behalf of the Appellant an effort was made to demonstrate that the workman had suffered a heart attack due to “natural causes” and that his duties on board ship did not involve a peculiar or special danger that was liable to lead to a heart attack. This case was sought to be set up in the Examination-in-Chief of Dr.Sainath Shetty who was working as an Assistant Medical Officer with the Appellant. However, during the course of his cross-examination, the witness stated that he was not a Cardiologist and that he was not aware as to who had done the pre-employment medical check up. The witness, however, admitted that at the time of the pre-employment examination, a physical examination is carried out together with a blood test, urine test, X-ray and ECG. The witness stated that every seaman has to undergo medical examination each time he joins the ship and a fitness certificate would not be issued to any one who suffers from heart disease. This part of the evidence assumes significance because the medical history of the Respondent which was scrutinised by the Medical Board of the Appellant would show the absence of any prior history relating to a

heart ailment. The decided cases have emphasised that even a workman with a pre-existing ailment would not be disentitled to claim workmen's compensation in a case where the nature of the employment has resulted in a deterioration of the medical condition. But a case where there is no pre-employment medical ailment stands on a stronger footing. A seaman is specifically within the purview of the definition of the expression “workman” in Section 2(1)(n) of the Workmen's Compensation Act, 1923. That in itself is justifiable for the reason that seamen on board sea going vessels are subjected to the risk of injury which arises out of the nature of the environment in which they are employed and the continuous work over a long period of time that is required to be discharged, day after day, without a break. Many workmen in conventional settings are perhaps not exposed to the nature of risk to which seamen working in the isolation of a sea going vessel are exposed. In the facts of this case, the workman was entirely free of any existing heart ailment. His fitness and medical condition were certified before he was taken up on board the vessel. It was during the course of his employment on the ship that after a period of 6.1/2 months he was detected to suffer

from a heart ailment. Direct evidence about an injury being attributable to the course of employment may, as the Supreme Court held, not be available in every case. An inference has to be drawn based on the exercise of judicial consideration having regard to the nature of the duties, the conditions of employment and the environment in which the work is discharged. The Commissioner for Workmen's Compensation has drawn a legitimate inference based upon a considered view of all the facts and circumstances of the case. The finding of the Commissioner is consistent with the law laid down by the Supreme Court and with several judgments of High Courts of which a reference has already been made earlier. This Court would not be justified in interfering with the decision of the Commissioner particularly when as noted at the very outset that the exercise of its jurisdiction is circumscribed by the existence of a substantial question of law by Section 3(1) of the Workmen's Compensation Act, 1923. The quantification of compensation by the Commissioner is in accordance with the provisions of the Act and the direction in regard to the payment of interest is in accordance with the provisions of Section 4A(3). Fairly that part of the order (namely, on the

quantification of compensation and interest) has not been assailed in the course of submissions of Counsel for the Appellant.

11. In the circumstances, there is no merit in the First Appeal. The appeal shall accordingly stand dismissed.

12. In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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